THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 19428 of 2004

Dated: 28-09-2005

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Between:

K.R.Prasad and others.

..... PETITIONERS

AND

Krishna Zilla Parishad, represented by its Chief Executive Officer, Chilakalapudi, Machilipatnam, Krishna District and another.

..RESPONDENTS.

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 19428 of 2004

ORDER:

This writ petition has been filed by the petitioners, who are eight in number, with a prayer to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the proceedings bearing

No.R.C.No.8685/2000-M2 dated 07-06-2004 and the consequential proceedings bearing R.C.No.5685/2000/M2 dated 16-08-2004 as illegal and ultra vires to the provisions of Articles 14 and 19 (1)(g) of the Constitution of India.

2. The petitioners are tenants carrying on their respective business in the non-residential shops belonging to the second respondent having entered into possession of the same on understanding to pay a sum of Rs.450/-per month initially and enhancement of @ 33 1/3% at the expiry of every three years. The grievance of the petitioners is that lease period must have been five years under the Rules relating to the Acquisition and Transfer of Immovable Property by Mandala Praja Parishads and Zilla Parishads, vide G.O.Ms.No.492 dated 10-4-1962, in which event, they are liable to pay enhanced rent @ 33 1/3% at the expiry of five years. They submitted representations to the first respondent to treat the period of licence as five years commencing from 1-12-1977 and subsequent renewals also for five years and collect the lease amount accordingly. The true translation of the representation dated 29-7-2004 submitted by the petitioners to the first respondent reads as follows;

> "We are the lessees of Zilla Parishad Shops situate at Nidumolu. We have paid lease amount @ Rs.640/- for the period from 1-12-1977 to 30-11-2000. Subsequently, we paid lease amount of Rs.840/- for the period from 1-12-2000 to 30-11-2003. Whereas the authorities are pleased to give on lease for a period of five years at a much lower price at Mopidevi in Krishna District which is not only a Mandal Headquarters but also a Tourist spot. The authorities have given for lease at a much lower price than us. Comparatively, our Nidomolu Village is not only small but the business is also less. Hence, taking into consideration the above facts, we request you to kindly reduce the lease amount and give on rent the shops for a total period of five years at a stretch and oblige".

Since the respondents have not conceded the request of the petitioners, they approached this court by invoking the jurisdiction under Article 226 of the Constitution of India.

3. The respondents filed counter-affidavit. It is stated in the counter-affidavit that the petitioners have entered into an agreement of lease with the first respondent for carrying on their business for a period of three years from 01-12-2000 to 30-11-2003 subject to the terms and conditions prescribed in the

lease deed. It is further stated that the petitioners made a representation on 17-11-2003 i.e., just 13 days prior to the expiry of the invited lease period seeking extension of their lease period from 01-12-2000 to 30-11-2005 on the existing rentals retrospectively. As the request of the writ petitioners is contrary to the terms of the agreement entered into and also in view of the fact that the lease period has been expired by 30-11-2003, the same is turned down for the earlier lease period and however, their request was considered by the Standing Committee for extension of the lease for a period of five years for the future period on enhanced rents from 01-12-2003 to 30-11-2008. I deem it appropriate to refer para 5 and 6 of the counter-affidavit and it is thus:

> "With reference to the allegations in para No.5 absolutely there is no nexus to the shopping complex of Mopidevi and the shopping complex at Nidimolu. The leases are being given to the tenants basing on the potentiality of the business in that particular area and the persons who came forward to have the lease hold rights by agreeing to the terms and conditions imposed. Absolutely, there is no discrimination in the lease process and the Zilla Parishad is at liberty to lease out the premises to the highest offers and the petitioners cannot dictate terms for leasing out the properties of the Parishad regarding the limitation of the period and rate of rents. If the petitioners are not able to pay the rents, it is always open to them to quit the premises.
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> It is further submitted that by submitting fictious representation on 17-11-2003 seeking extension of lease for a period of 2 years retrospectively on the old rents is highly untenable and contrary to the agreement. They are not paying rents since 2003 i.e., since expiry of the lease period and therefore demand notices were issued asking to pay the rental dues. As against the demand notice the present writ petition was filed. Though there are no interim orders from this Court, the writ petitioners are not paying rental dues and causing serious loss to the Zilla Parishad".

Heard the learned counsel for the petitioners and the learned Standing counsel appearing for the respondents.

Learned counsel for the petitioners submits that as per Rule 6 of the Rules relating to the Acquisition and Transfer of Immovable Property by Mandala Praja Parishads and Zilla Parishads, the period of lease for shops is for five years and therefore, the action of the respondents in fixing the lease period as three years initially is contrary to the said Rule.

To make myself clear, I deem it appropriate to refer Rule 6 of the said Rules and it is thus;

> "Transfer by lease of immovable property belonging to Mandala Praja Parishad or Zilla Praja Parishad.
>
> (i) A Mandala Praja Parishad or Zilla Praja Parishad may lease out immovable property other than shops belonging to it for a period of three years and in the case of shops belonging to it for a period of five years.
>
> Provided that no Mandala Praja Parishad or Zilla Praja Parishad shall lease out its office building or any other building such as Primary Health centre Buildings to any other institution when such buildings are required for use by the Mandala Praja Parishads/Zilla Praja Parishads.
>
> Provided further that no such lease shall be valid in case the period of the lease exceeds three years or five years in the case of shops belonging to the Mandala Praja Parishad/Zilla Praja Parishad; or where the lessee is permitted to put up any building or structure whether of masonary, brick, wood mud or metal, unless the sanction of the District Collector concerned has been obtained therefor;'
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> Provided also that in the case of shops belonging to the Mandala Praja Parishad/zilla Praja Parishad, the Mandala Praja Parishad/zilla Praja Parishad concerned may renew the lease for another term not exceeding five years at a time without conducting public auction, if the present lessees agree to renew the lease in their favour at an amount which shall not be less than 33 1/3% over the existing annual lease amount and found reasonable by the Zilla Praja Parishad/Mandala Praja Parishad".

I read and re-read the Rule to appreciate the contention of the learned counsel for the petitioners that minimum period prescribed for lease of the shops is five years. What is prescribed in the rules is that the maximum and the minimum period depends upon the terms of the agreement between the parties and in any case it shall not exceed five years. It is very clear from the record that the lease period is three years initially and subsequently, it is extended by another three years subject to their paying enhanced rent @ 33 1/3%. The contract between the parties is a contract private law. There is no public law element involved in this case. It is the contention of the learned counsel for the petitioners that the licence has been granted in respect of other shops situated in some other villages for five years and therefore, granting lease of the shops situated in the village of the petitioners for three years amounts to discrimination. Fixing of period of lease depends upon the potentiality of shops situated in a particular village. Therefore, it does not

amount to any discrimination. I do not see any merits in the writ petition and the same is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

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28-09-2005

sj